

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

GWAYNE A. HAMEL,
Petitioner,
vs.
ROSEANNE CAMPBELL, Warden,
Respondent.

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No. C 06-04745 JW (PR)
ORDER TO SHOW CAUSE
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Petitioner, a state prisoner currently incarcerated at Mule Creek State Prison in Ione, California, has filed a pro se petition for a writ of habeas corpus under 28 U.S.C. § 2254 challenging his state conviction. Petitioner has paid the filing fee.

According to the petition, petitioner filed a state habeas corpus petition which was denied by the Santa Clara County Superior Court on April 18, 2005. The California Court of Appeals denied the petition on June 2, 2005, and the Supreme Court of California denied review on May 10, 2006. Petitioner filed the instant federal habeas petition on August 4, 2006.

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BACKGROUND

According to the petition, petitioner was convicted by a jury in Superior Court for the State of California in and for the County of Santa Clara of a lewd act with a child under 14 years of age in violation of California Penal Code § 288(a). Petitioner was sentenced to eighteen years and eight months in state prison.

DISCUSSION

A. Standard of Review

This court may entertain a petition for a writ of habeas corpus “in behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States.” 28 U.S.C. § 2254(a).

It shall “award the writ or issue an order directing the respondent to show cause why the writ should not be granted, unless it appears from the application that the applicant or person detained is not entitled thereto.” *Id.* § 2243.

B. Legal Claims

Petitioner raises three claims: 1) ineffective assistance of trial counsel for failing to investigate; 2) the suppression of exculpatory evidence by the prosecution; and 3) prosecutorial misconduct. Liberally construed, petitioner's claims appear cognizable under § 2254 and merit an answer from respondent.

CONCLUSION

For the foregoing reasons and for good cause shown,

1. The clerk shall serve by certified mail a copy of this order and the petition and all attachments thereto on respondent and respondent's attorney, the Attorney General of the State of California. The clerk also shall serve a copy of this

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1 order on petitioner.

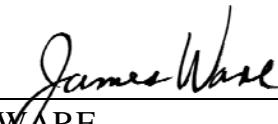
2 2. Respondent shall file with the court and serve on petitioner, within
3 **sixty (60) days** of the issuance of this order, an answer conforming in all respects to
4 Rule 5 of the Rules Governing Section 2254 Cases, showing cause why a writ of
5 habeas corpus should not be issued. Respondent shall file with the answer and serve
6 on petitioner a copy of all portions of the state trial record that have been transcribed
7 previously and that are relevant to a determination of the issues presented by the
8 petition.

9 If petitioner wishes to respond to the answer, he shall do so by filing a
10 traverse with the court and serving it on respondent within **thirty (30) days** of his
11 receipt of the answer.

12 3. Respondent may file a motion to dismiss on procedural grounds in lieu
13 of an answer, as set forth in the Advisory Committee Notes to Rule 4 of the Rules
14 Governing Section 2254 Cases. If respondent files such a motion, petitioner shall
15 file with the court and serve on respondent an opposition or statement of non-
16 opposition **thirty (30) days** of receipt of the motion, and respondent shall file with
17 the court and serve on petitioner a reply **fifteen (15) days** of receipt of any
18 opposition.

19 4. Petitioner is reminded that all communications with the court must be
20 served on respondent by mailing a true copy of the document to respondent's
21 counsel. Petitioner must also keep the court and all parties informed of any change
22 of address.

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24 DATED: May 18 2007



JAMES WARE
United States District Judge